

(e) *Effective/applicability date.* This section applies to any request for return of wrongfully levied property that is filed after August 20, 2007.

[T.D. 9344, 72 FR 39739, July 20, 2007]

§ 301.6343-3 Return of property in certain cases.

(a) *In general.* If money has been levied upon and applied toward the taxpayer's liability, or property has been levied upon and sold, and the receipts have been applied toward the taxpayer's liability, or property has been levied upon and purchased by the United States and the United States still possesses the property, and the Commissioner determines that any of the conditions in paragraph (c) of this section exist, the Commissioner may return—

- (1) An amount of money equal to the amount of money levied upon;
- (2) An amount of money equal to the amount of money received by the United States from a sale of the property; or
- (3) The specific property levied upon and purchased by the United States.

(b) *Return of levied upon property in possession of the Internal Revenue Service (IRS) pending sale under section 6335.* Other than as provided in § 301.6343-1(b) or in paragraph (d) of this section, the Commissioner, in his or her discretion, may return levied upon property that is in the possession of the United States pending sale under section 6335.

(c) *Conditions authorizing the return of property.* The Commissioner may return property upon determining that one of the following conditions exist:

(1) *Premature or not in accordance with administrative procedures.* The levy was premature or otherwise not in accordance with the administrative procedures of the Secretary.

(2) *Installment agreement.* Subsequent to the levy, the taxpayer enters into an agreement under section 6159 to satisfy the liability for which the levy was made by means of installment payments. If, however, the agreement specifically provides that already levied upon property will not be returned under section 6343(d), the Commissioner may not grant a request for return of property under this paragraph (c)(2).

(3) *Facilitate collection.* The return of property will facilitate the collection of the tax liability for which the levy was made.

(4) *Best interests of the United States and the taxpayer—(i) In general.* The taxpayer or the National Taxpayer Advocate (or his or her delegate) has consented to the return of property, and the return of property would be in the best interest of the taxpayer, as determined by the National Taxpayer Advocate (or his or her delegate), and in the best interest of the United States, as determined by the Commissioner.

(ii) *Best interest of the taxpayer.* The National Taxpayer Advocate (or his or her delegate) generally will determine whether the return of property is in the best interest of the taxpayer. If, however, a taxpayer requests the Commissioner to return property and has not specifically requested the National Taxpayer Advocate (or his or her delegate) to determine the taxpayer's best interest, a finding by the Commissioner that the return of property is in the best interest of the taxpayer will be sufficient to support the return of property. Only the National Taxpayer Advocate (or his or her delegate) may determine that a return of property is not in the best interest of the taxpayer.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (c):

Example 1. A owes \$1,000 in Federal income taxes. The IRS levies on a broker with respect to a money market account belonging to the taxpayer and receives payment from the broker which it applies to the taxpayer's outstanding liability. However, the IRS failed to follow procedure provided by the Internal Revenue Manual (but not required by statute) with regard to managerial approval prior to the making of the levy. The Commissioner may return an amount of money equal to the amount of money the IRS levied upon and applied toward the taxpayer's tax liability.

Example 2. B owes \$1,000 in Federal income taxes. The IRS levies on a bank with respect to a savings account belonging to the taxpayer and receives funds from the bank, which it applies to the taxpayer's liability. Subsequent to the levy, B enters into an installment agreement, under which B will pay timely installments to satisfy the entire liability. The installment agreement does not by its terms preclude the return of levied

upon property. The revenue officer verifies that B is financially capable of paying the entire liability, including accruals, in the agreed-upon installment payments. The Commissioner may return an amount of money equal to the amount of money levied upon and applied toward the taxpayer's liability.

Example 3. C owns a house that is deteriorating and in unsalable condition. C is in the process of renovating the house for sale when the IRS levies upon C's bank account for the payment of a \$20,000 outstanding Federal tax liability and receives funds in the amount of \$3,000, which it applies toward C's liability. A notice of federal tax lien is the only lien encumbering the house. C requests that an amount of money equal to the amount seized from the bank account be returned so that C can complete the renovations on the house. Without the funds, C will be unable to complete the renovations and sell the house. Upon examination, the Commissioner determines that the IRS will be able to collect the entire tax liability if C's house is restored to salable condition. If the National Taxpayer Advocate, or the Commissioner in lieu of the National Taxpayer Advocate, determines that the return of the seized money is in the taxpayer's best interest, the Commissioner may return an amount of money equal to the amount seized from the bank account, in the best interest of the taxpayer and the United States.

(d) *Best Interests of the United States and the taxpayer to release levy and return of property where levy made in violation of law—(1) In general.* If the IRS makes a levy in violation of the law, it is in the best interests of the United States and the taxpayer to release the levy and the IRS will return to the taxpayer any property obtained pursuant to the levy. For example, the IRS will release the levy and return the taxpayer's property if the levy was made—

- (i) Without giving the requisite thirty-day notice of the right to a hearing under section 6330;
- (ii) During the pendency of a proceeding for refund of divisible tax in violation of section 6331(i);
- (iii) Before investigation of the status of levied upon property in violation of section 6331(j);
- (iv) During the pendency of an offer-in-compromise in violation of section 6331(k)(1); or
- (v) During the period an offer to enter into an installment agreement is pending (or for 30 days following the rejection of an offer, or, if the rejection is timely appealed, during the period

that the appeal is pending) or during the period an installment agreement is in effect (or during the 30 days following a termination or, if a timely appeal of termination is filed, during the period the appeal is pending) in violation of section 6331(k)(2).

(2) *Property may not be credited to outstanding liability without the taxpayer's permission.* When the release of a levy and the return of property are required under this paragraph (d), the property or the proceeds from the sale of the property received by the IRS pursuant to the levy must be returned to the taxpayer unless the taxpayer requests otherwise. The property or proceeds of sale may not be credited to any outstanding tax liability of the taxpayer, including the one with respect to which the IRS made the levy, without the written permission of the taxpayer.

(e) *Time of return.* Levied upon property in possession of the IRS (other than money) may be returned under paragraphs (c) and (d) of this section at any time. An amount of money equal to the amount of money levied upon or received from a sale of property may be returned at any time before the expiration of 9 months from the date of the levy. When a request for the return of money filed in accordance with paragraph (h) of this section is filed before the expiration of the 9-month period, or a determination to return an amount of money is made before the expiration of the 9-month period, the money may be returned within a reasonable period of time after the expiration of the 9-month period if additional time is necessary for investigation or processing.

(f) *Purchase by the United States.* For purposes of paragraph (a)(2) of this section, if property is declared purchased by the United States at a sale pursuant to section 6335(e)(1)(C), the United States will be treated as having received an amount of money equal to the minimum price determined by the Commissioner before the sale.

(g) *Determinations by the Commissioner.* The Commissioner must determine whether any of the conditions authorizing the return of property exists if a taxpayer submits a request for the return of property in accordance with

paragraph (h) of this section. The Commissioner also may make this determination independently. If the Commissioner determines that conditions authorizing the return of property are not present, the Commissioner may not authorize the return of property. If the Commissioner determines that conditions authorizing the return of property are present, the Commissioner may (but is not required to, unless the reason for the return of property is that the levy was made in violation of law and is governed by paragraph (d) of this section) authorize the return of property. If the Commissioner decides independently to return property under paragraph (c)(4) of this section based on the best interests of the taxpayer and the United States, the taxpayer or the National Taxpayer Advocate (or his or her delegate) must consent to the return of property.

(h) *Procedures for request for the return of property*—(1) *Manner*. A request for the return of property must be made in writing to the address on the levy form.

(2) *Form*. The written request must include the following information—

(i) The name, current address, and taxpayer identification number of the person requesting the return of money (or property purchased by the United States);

(ii) A description of the property levied upon;

(iii) The date of the levy; and

(iv) A statement of the grounds upon which the return of money is being requested (or property purchased by the United States).

(i) *No interest*. No interest will be paid on any money returned under this section.

(j) *Administrative collection upon default*. If the Commissioner returns property under this section, and the taxpayer fails to pay the previously assessed liability for which the levy was made on the returned property, the Commissioner may administratively collect the liability. Collection may include levying again on the returned property as long as statutory and administrative requirements are followed.

(k) *Effective date*. This section is applicable on July 14, 2005.

[T.D. 9213, 70 FR 40670, July 14, 2005]

§ 301.6361-1 Collection and administration of qualified taxes.

(a) *In general*. In the case of any State which has in effect a State agreement (as defined in paragraph (a) of § 301.6361-4), the Commissioner of Internal Revenue shall collect and administer each qualified tax (as defined in paragraph (b) of § 301.6361-4) of such State. No fee or other charge shall be imposed upon any State for the collection or administration of any qualified tax of such State or any other State. In any such case of collection and administration of qualified taxes, the provisions of subtitle F (relating to procedure and administration), subtitle G (relating to the Joint Committee on Taxation), and chapter 24 (relating to the collection of income tax at source on wages), and the provisions of regulations thereunder, insofar as such provisions relate to the collection and administration of the taxes imposed on the income of individuals by chapter 1 (and the civil and criminal sanctions provided by subtitle F, or by title 18 of the United States Code (relating to crimes and criminal procedure), with respect to such collection and administration) shall apply to the collection and administration of qualified taxes as if such taxes were imposed by chapter 1, except to the extent that the application of such provisions (and sanctions) are modified by regulations issued under subchapter E (as defined in paragraph (d) of § 301.6361-4). Any extension of time which is granted for the making of a payment, or for the filing of any return, which relates to any Federal tax imposed by subtitle A (or by subtitle C with respect to filing a return) shall constitute automatically an extension of the same amount of time for the making of the corresponding payment or for the filing of the corresponding return relating to any qualified tax.

(b) *Returns of qualified taxes*. Every individual, estate, or trust which has liability for one or more qualified taxes for a taxable year—

(1) Shall file a Federal income tax return at the time prescribed pursuant to